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March 9, 2023

By **Friday, April 24, 2023**, the parties shall file a joint letter, not exceeding three pages, reporting on the status of document discovery.

SO ORDERED 03/10/23


SARAH L. CAVE
United States Magistrate Judge

BY ECF

Hon. Sarah L. Cave
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *Dorce, et al. v. City of New York, et al.*, No. 1:19-cv-02216 (JLR) (SLC)

Dear Judge Cave:

Plaintiffs, Municipal Defendants,¹ and Transferee Defendants² write pursuant to this Court's February 24, 2023 Order (ECF No. 242) to report on the status of document discovery.³ The parties respectfully suggest that they submit a joint letter in two weeks' time on the status of document discovery. Plaintiffs further request that Transferee Defendants submit an update to the Court in one week on the representation of Transferee Defendants.

Municipal Defendants' Productions

Municipal Defendants' Statement:

On February 28, the parties held a meet-and-confer concerning Plaintiffs' request for documents "concerning" a TPT Working Group and certain spreadsheets produced by MDs. The

¹ "Municipal Defendants" refers to defendants the City of New York (the "City"), Louise Carroll, former Commissioner of the City's Department of Housing Preservation and Development ("HPD"), and Sherif Soliman, former Commissioner of the City's Department of Finance ("DOF").

² "Transferee Defendants" are BSDC Kings Covenant Housing Development Fund Company, Inc. ("BSDC") and Neighborhood Restore Housing Development Fund Corp. ("Neighborhood Restore").

³ David Goldstein of Goldstein Hall PLLC is signing this joint letter on behalf of Transferee Defendants. Yesterday at 3:35pm, Brian Markowitz emailed the Parties stating that "today is my last day at this firm. It is anticipated that I will continue on this matter at my new firm when I start next week." Mr. Markowitz's Goldstein Hall email address is no longer operative and he did not provide any alternate contact information. Yesterday at 8:21pm, Mr. Goldstein informed the Parties that "As you are aware, Brian Markowitz is no longer with my firm. Please make sure to copy me and Ryan Thompson from my firm on all emails. I am trying to get caught up to speed."

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parties agreed that MDs would produce the spreadsheets without redaction of phone numbers as PII, subject to Plaintiffs' agreement that they could be designated as confidential pursuant to the confidentiality order. MDs also agreed that, subject to their continuing objection to searching for and producing additional documents concerning the TPT working group, they would run search terms if Plaintiffs proposed them. On March 3, Plaintiff sent proposed search terms. On March 7, MDs provided hit reports for Plaintiffs' proposed search terms and explained that the search terms were overbroad and that they continued to object to the request but that, if Plaintiffs proposed narrower terms, they would consider whether a proportional review and production could be made employing such terms.

On March 6, Municipal Defendants (MDs) made a supplemental production consisting of documents that had been incorrectly withheld as privileged, drafts and segments of the TPT Working Group Report and appendices that were disseminated to the Working Group, and reproductions of the spreadsheets discussed above.

Plaintiffs' Statement:

Plaintiffs remain in the process of assessing Municipal Defendants' privilege log. Plaintiffs are reviewing Municipal Defendants' March 6 supplemental productions to evaluate Municipal Defendants' assertions that their production is substantially complete, and that the attorney-client communication redactions render the admittedly responsive, prior versions of the spreadsheets too burdensome to produce.

On March 8, 2023, Municipal Defendants provided Plaintiffs with hit reports for Plaintiffs' proposed search terms related to the TPT Working Group documents. Plaintiffs are reviewing the hit reports and assessing possible narrowed search terms for these materials.

Transferee Defendants' Productions

Transferee Defendants' Statement:

Non-municipal defendants' have completed their rolling production of documents. Non-Municipal Defendants have now produced over 36,000 documents, and nearly 208,000 pages. This does not include documents which have been marked potential privilege, and which are undergoing subsequent review for either redaction, inclusion on privilege log as attorney client/work product, being released as confidential or being released without any marking. These second level of review is to be kicked off shortly and we will need to discuss with our vendor an appropriate time frame for its completion. It is anticipated that it will extend beyond the Court's current deadline and we will meet and confer with Counsel for Plaintiffs to come to a reasonable date for conclusion of privilege/redacted documents.

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Plaintiffs' Statement:

On January 18, 2023 and in connection with proposing a revised case management plan, Transferee Defendants indicated that they expected to produce “between 29,000 and 72,000 additional responsive documents.” ECF No. 237. Since that time, Transferee Defendants have made several productions totaling 16,384 documents. On March 7, Transferee Defendants indicated they produced their “final set” of documents. Pursuant to the Court-ordered Second Amended Case Management Plan, the deadline for Transferee Defendants to substantially complete their document production was March 7. ECF No. 238.

Plaintiffs have a number of questions in follow-up to Transferee Defendants' representation regarding their final production, including the following:

- For Transferee Defendants to explain the discrepancy between the volume of actual and anticipated productions (16,384 vs. 29,000–72,000).
- Whether, pursuant to the TAR with CAL review protocol that Transferee Defendants agreed to, which is substantially similar to what Municipal Defendants agreed to, ECF No. 194, and was communicated to the Court in Plaintiffs and Transferee Defendants' September 30, 2022 joint status letter, ECF No. 210, Transferee Defendants would confirm that they used certain benchmarking and sampling to determine when to complete their review.
- Whether, pursuant to that protocol Transferee Defendants will provide certain reporting on their TAR with CAL review to Plaintiffs.
- The number of documents that Transferee Defendants are reviewing for privilege.
- When Plaintiffs can expect to receive Transferee Defendants' privilege log.

Plaintiffs hope to discuss these issues with Transferee Defendants in the coming week.

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Respectfully submitted,

PLAINTIFFS

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cc: Counsel of Record (via ECF)